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10/541,085	04/06/2006	James Eldon	878A.0010.U1(US)	4067
29683	7590	05/01/2008	EXAMINER	
HARRINGTON & SMITH, PC			RAINEY, ROBERT R	
4 RESEARCH DRIVE			ART UNIT	PAPER NUMBER
SHELTON, CT 06484-6212			2629	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action

Response to Arguments

1. Applicant's arguments filed 10 March 2008 have been fully considered but they are not persuasive.
2. Applicant argues on page 6 that Lueders fails to teach the mechanical key element. It is for the teaching of this element that Ostergard was combined. Upon further review Examiner notes that even Lueders includes the mechanical key element. In Fig. 3 the layers labeled 32, 34, and 36 combined with the snap dome of switch 28 for example comprise this mechanical key element.
3. Applicant argues in the first full paragraph of page 7 that Ostergard fails to disclose a display device, the display pattern of which can be varied under the control of a display controller. It is for the teaching of this element that Lueders was cited. Upon further review Examiner notes that even Ostergard includes this teaching. Although applicant alleges that Ostergard uses only a masking layer, a more careful consideration of the reference reveals at Fig. 2B that even a simple mask layer can be used to propagate two or more patterns of light with Fig. 2C and Fig. 3A/B providing further examples.
4. Applicant points out in the last paragraph of page 7 Examiner's lack of precision in stating the teaching required of Ostergard, for which lack Examiner apologizes. Since Lueders already included the display in the required position it is for the teaching of the mechanical switch elements that Ostergard was cited. This is evident for example from the absence of the word "mechanical" in the recitation of the teachings of Lueders.

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5. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge of one of ordinary skill was relied upon, in particular that adding a mechanical feature to bridge the gap between the finger contact area of a key pad and its associated switch could allow the keypad to be used in additional applications such as to replace the softkeys in certain portable electronic devices. The remainder of Applicant's arguments seem directed to the lack of a written reference for the teaching/suggestion/motivation (TSM) test. Since a written reference is not a strict requirement these arguments are not persuasive.

7. For the above reasons the rejections of the previous office action are maintained.
8. Amendments to the claims do not place the application in condition for allowance and require further consideration and are therefore not entered.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT R. RAINY whose telephone number is (571)270-3313. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amare Mengistu can be reached on (571) 272-7674. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/RR/

/Amare Mengistu/

Supervisory Patent Examiner, Art Unit 2629